HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.7075 of 2007

Between:

H.M.Jamrose

… Petitioner

AND

The Assistant Divisional Engineer,
APCPDCL, Operation Circle,
Mind Compound, Hyderabad

and two others.

… Respondents

; O R D E R :

Counsel for the petitioner : Shri M.M.Firdos

Counsel for respondents : Shri S.V.Ramana

Dated: 17th April, 2007

Per C.V.NAGARJUNA REDDY, J.

In this petition, the petitioner has prayed for quashing order dated 16.1.2007 passed by Andhra Pradesh State Consumer Disputes Redressal Commission (for short 'the State Commission') in F.A.No.1730 of 2005. he has further prayed for grant of a declaration that demand of Rs.51,780/- and surcharge made by the respondent in respect of service connection bearing No.B1-5151 relating to Flat No.602, VI Floor, Mount Nasir, Saifabad, Hyderabad is illegal and unenforceable against him.

The facts necessary for the disposal of this case are that the petitioner approached the District Consumer Disputes Redressal Forum-II, Hyderabad (for short 'the District Forum') by filing C.D.No.329 of 2005 wherein he petitioner complained of deficiency in service rendered by the respondents and sought for relief of restoration of power supply to his residential flat. In the complaint filed before the District Forum the petitioner pleaded that he is the absolute owner of residential flat bearing No.602, Mount Nasir, Saifabad, Hyderabad situated in premises bearing municipal No.6-1-57 to 61; that he purchased the flat from M/s.Kohinoor Builders after paying valuable consideration; that the flat was provided with electricity connection under consumer No.B1-5151; that one Ashfaq Ahmed (for short "the occupant") occupied the flat by cheating and misrepresentation; that during his illegal occupation, he consumed power supply unlawfully and he has already taken steps to evict the occupant. The petitioner further averred that when he came to know about the arrears of electricity charges to the tune of Rs.30,796/-, letter dated 27.1.2004

was sent to the concerned authority, i.e., the Assistant Divisional Engineer for recovery of arrears from the occupant, but the latter failed to do so and disconnected the supply. After securing possession of flat the petitioner approached the Assistant Divisional Engineer, Operation, Saifabad for restoration of power supply and at that stage he was informed about the arrears of electricity dues amounting to Rs.51,780/-.The petitioner pleaded that the details of the account pertaining to the service connection disclosed that a sum of Rs.30,796/- was shown to have been received from the occupant of the flat on 31.1.2004, but the same was again debited in the account because the cheque issued by the said occupant was dishonoured. According to the petitioner, failure of the respondents to collect the arrears of electricity dues from the occupant namely Ashfaq Ahmed constituted deficiency of service and they were not entitled to demand of Rs.51,780/- from him as a condition for restoration of supply.

In the counter affidavit filed on behalf of the respondents, it was averred that one Smt.Fauzia Sultana was the registered consumer and that the bills were being sent to her. In para-6 of the counter, it was stated that the petitioner is not a registered consumer and the respondents cannot act upon his request for withdrawal of power supply and that if the petitioner claims ownership, he is duty bound to take steps for prompt payment of bills.

By an order dated 24.10.2005, the District Forum dismissed the complaint of the petitioner by observing that Smt.Fauzia Sultana was the registered consumer and not the petitioner and, as such, he does not fall within the definition of ‘consumer’ for the purpose of the Consumer Protection Act, 1986 (for short, ‘the 1986 Act’).

The appeal preferred by the petitioner under Section 15 of the Act which was registered as F.A.No.1730 of 2005 was disposed by the

State Commission with an observation that the petitioner may approach the Special Tribunal constituted under Section 49-C of the Indian Electricity (A.P.Amendment) Act 2000. The State Commission directed the petitioner to file an application within six weeks. The State Commissioner also directed the special Tribunal to decide the case on merits.

Sri M.M.Firdos, learned counsel for the petitioner argued that the direction given by the State Commission to his client to approach the Special Tribunal constituted under Section 49-C of the Indian Electricity Act 1910, as amended by Andhra Pradesh Act of 2000 is legally unsustainable because the Tribunal constituted under the Indian Electricity Act, 1910 is no longer functional.

Sri S.V.Ramana, learned counsel appearing for the respondents fairly conceded that after the repeal of 1910 Act by the Electricity Act 2003, the Special Tribunals constituted under the former Act have ceased to function.

We have considered the respective submissions. By Act No.35 of 2000 the Andhra Pradesh State Legislature introduced a series of amendments to the provisions of the 1910 Act. The said amendment received the assent of the President on 28.10.2000. Apart from amendments to some of the existing provisions under the Act Sections 49-B to Section 49-I were introduced by the said amendment. Section 49-B provided for compounding of offences enumerated in the said provision, Section 49-C envisaged constitution of Special Tribunals to try the offences under the Act and determine the compensation to be awarded to the electricity utility where the compensation awarded is upto the value of Rs.5,00,000/-. Under Section 49-D Special Courts are constituted for the purpose of providing speedy enquiry into theft of energy and trial of cases and for awarding compensation to the

electricity utility. Sections 49-E and F provided for procedure and power of Special Court, Section 49-G provided for power of review to the Special Court. Section 49-I conferred jurisdiction on Special Tribunal and Special Court to decide the disputes relating to meters. It is apt to extract Section 49-C which is relevant for this case hereunder:

> *" **49-C. Constitution of Special Tribunals:-** (1) For the purpose of providing for speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, specify for a District or Districts court of District and Sessions Judge to be special Tribunal to try the offences under this Act and determine the compensation to be awarded to the Electricity Utility where the compensation to be awarded is upto the value of rupees five lakhs.*
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> *Provided that if, in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special Court, it may, for reasons to be recorded by it, transfer the case to the Special Court for its decision in the matter.*
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> *(2) An appeal shall lie from any judgment or order, not being interlocutory order, of Special Tribunal, to the Special Court. Every appeal under this sub-section shall be preferred within a period of sixty days from the date of judgment or order of the Special Tribunal:*
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> *Provided that the Special Court may entertain an appeal after the expiry of the said period sixty day, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.*
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> *(3) Every finding of the Special Tribunal with regard to any alleged act of theft of energy shall be conclusive proof of the fact of theft of energy and shall be binding on the person or consumer concerned.*
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> *(4) It shall be lawful for the Special Tribunal to pass any order in any case decided by it awarding compensation in terms of money for theft of energy which shall not be less than an amount equivalent to twelve months assessed quantity of the energy committed theft of at three time or tariff rate applicable to the consumer or person as per guidelines prescribed by the State Government from time to time and the amount of compensation so awarded shall be recovered as if it were decree of civil court;*
>
> *Provided that the Special Tribunal shall before passing any order under this sub-section give to the consumer or person an opportunity of making his representation or of adducing evidence if any, in this regard and consider every such representation and evidence.*
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> *(5) Any case pending before any Court or other Authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act 2000, as would have been within the jurisdiction of a Special Tribunal shall stand transferred to the*

Special Tribunal, having jurisdiction as it the cause of action on which such suit or proceeding is based had arisen after such commencement.

(6) Every case brought before the Special Tribunal shall be disposed of finally by the Special Tribunal, as far as possible within a period of six months from the date of its having been brought before it.

(7) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every offence punishable under this Act, shall be tried in summery way by the Special Tribunal and the provisions of Sections 263 to 265 of the said Code shall as far as may be apply to such trial."

It is required to be noticed that the Parliament enacted the Electricity Act 2003 which came into effect from 10.6.2003. Section 185 of the said Act repealed Indian Electricity Act 1910 (Act 9 of 1910) apart from other enactments mentioned therein. The limited saving of certain provisions of Indian Electricity Act and the Indian Electricity Rules enumerated in sub-section 2 (b) and (c) of Section 185 does not relate to the constitution and continuance of the Special Tribunals referred to under Section 49-C of the Indian Electricity Act 1910. The provisions of the 2003 Act do not appear to have been brought to the notice of the State Comission, else there was no occasion for it to direct the petitioner to approach the Special Tribunal constituted under Section 49-C of the 1910 Act.

In view of the above, the writ petition is allowed. Order dated 16.1.2007 passed by the State Commission in F.A.No.1730 of 2005 is set aside and the case is remanded for fresh adjudication of the appeal preferred by the petitioner against the order of the District Forum. It is, however, made clear that this order shall not be understood as this Court expressing any opinion on merits and it shall be open to the State Commission to adjudicate all aspects arising in the appeal including the issue whether the petitioner is a consumer within the

definition of Section 2(1)(d) of the 1986 Act and pass appropriate orders on merits.

As a sequel to disposal of the writ petition, W.P.M.P.Nos.9005 and 9006 of 2007 are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 17-04-2007.
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HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION No.7075 of 2007

(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Dated: 17th April, 2007